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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/820,635	04/08/2004	Tsontcho Ianchulev	17391-002001	8819
26161	7590	07/11/2007	EXAMINER	
FISH & RICHARDSON PC P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			STULTZ, JESSICA T	
			ART UNIT	PAPER NUMBER
			2873	
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			07/11/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/820,635

Applicant(s)

IANCHULEV, TSONTCHO

Examiner

Jessica T. Stultz

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 May 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 12-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 July 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 0704.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of Group I, claims 1-11 in the reply filed on May 3, 2007 is acknowledged. Claims 12-21 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected group, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on May 3, 2007.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 4-6, and 8-11 are rejected under 35 U.S.C. 102(e) as being anticipated by Norrby et al US 6,609,793, herein referred to as Norrby et al '793.

Regarding claim 1, Norrby et al '793 discloses a method for selecting the power of an intraocular lens (Abstract, Column 4, lines 16-20 and Column 10, lines 17-34), comprising extracting the native lens (Column 11, lines 44-51, wherein the natural lens is removed from the eye); performing autorefraction on the aphakic eye to provide one or more aphakic refraction measurements (Column 11, lines 44-65, wherein aberrations, i.e. refraction measurements, of the aphakic eye are determined automatically); determining the power of the intraocular lens from the one or more aphakic refraction measurements (Column 10, lines 17-34 and Column 11, lines

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29-65, wherein the power of the intraocular lens is determined using the aphakic refraction measurements).

Regarding claim 4, Norrby et al '793 further discloses that the method is used for patients that have previously undergone vision correcting refractive surgery (Column 8, lines 57-65, wherein the patients include patients that have previously undergone corrective refractive surgery).

Regarding claims 5-6, Norrby et al '793 further discloses that the determining the power of the intraocular lens comprises using a predictive model that is an empirically or theoretically derived relationship between the autorefraction measurements and the power of the intraocular lens (Abstract and Column 5, line 33-Column 7, line 33, wherein the power of the lens is determined by corneal modeling and Zernike wavefront aberrations, thereby empirical and theoretical models).

Regarding claim 8, Norrby et al '793 further discloses that the autorefraction comprises making a plurality of autorefraction measurements and averaging the measurements (Column 7, lines 13-63).

Regarding claims 9-11, Norrby et al '793 further discloses that the power of the intraocular lens comprises determining the power from the one or more autorefractive measurements and from other parameters (Column 4, line 56-Column 5, line 48), specifically, preoperative (Column 8, lines 57-65, wherein the patients include those about to have surgery, i.e. preoperative) anatomic measurements of the eye (Column 4, lines 61-65) or intraoperative axial length (Column 5, lines 33-48).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-3 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Norrby et al '793, as applied to independent claim 1 above, and further in view of Sunalp et al US 2004/0167622, herein referred to as Sunalp et al '622.

Regarding claims 2-3 and 7, Norrby et al '793 discloses a method for selecting the power of an intraocular lens as shown above, but does not specifically disclose that the autorefraction is performed with the patient in the same position in which the native lens was extracted, specifically in the supine position or that the native lens is extracted using a surgical microscope and the autorefraction is performed using an autorefraction device configured to be moved into place for making autorefraction measurements following extraction of the native lens using the surgical microscope. In the same field of endeavor of method for selecting power of an intraocular lens, Sunalp et al '622 teaches of measuring the refraction of a post-operative eye while the patient in the same position in which the native lens was extracted, specifically in the supine position (Sections 26-27, Figure 4) wherein the native lens is extracted using a surgical microscope and the autorefraction is performed using an autorefraction device configured to be moved into place for making autorefraction measurements following extraction of the native lens using the surgical microscope (Sections 18 and 24-27) for the purpose of obtaining accurate measurement of the refractive status of an eye and calculate intraocular lens power where

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keratometry readings are difficult to obtain (Sections 19 and 24). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made for the method for selecting the power of an intraocular lens of Norrby et al '793 to further comprise the autorefraction performed with the patient in the same position in which the native lens was extracted, specifically in the supine position, wherein the native lens is extracted using a surgical microscope and the autorefraction is performed using an autorefraction device configured to be moved into place for making autorefraction measurements following extraction of the native lens using the surgical microscope since Sunalp et al '622 teaches of measuring the refraction of a post-operative eye while the patient in the same position in which the native lens was extracted, specifically in the supine position wherein the native lens is extracted using a surgical microscope and the autorefraction is performed using an autorefraction device configured to be moved into place for making autorefraction measurements following extraction of the native lens using the surgical microscope for the purpose of obtaining accurate measurement of the refractive status of an eye and calculate intraocular lens power where keratometry readings are difficult to obtain.

Conclusion

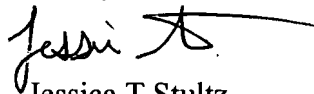
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Arrowsmith US 6,626,538, Piers et al US 2004/0156014, and Volk US 4,710,193 are cited as having some similar structure to the claimed invention since they disclose methods of selecting the power of an intraocular lens by measuring refractive properties of the eye.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica T. Stultz whose telephone number is (571) 272-2339. The examiner can normally be reached on M-F 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky Mack can be reached on 571-272-2333. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Jessica T Stultz
Examiner
Art Unit 2873
July 9, 2007